

**TITLE 106
LEGISLATIVE RULE
COMMISSIONER OF BANKING**

**SERIES 18
ACQUISITION OF PROPERTY BY FINANCIAL
INSTITUTIONS AND VALUATION OF REAL ESTATE
OWNED BY STATE-CHARTERED BANKS**

' 106-18-1. General.

1.1. Scope. -- This rule regulates certain conduct in the acquisition of property by financial institutions through foreclosure or surrender of deed or otherwise in satisfaction of debt previously contracted and establishes standards for the proper valuation by state-chartered banks of real estate obtained for sale or use.

1.2. Authority. -- W. Va. Code ' ' 31A-4-13 and 31A-2-4(c)(11).

1.3. Filing Date. -- April 18, 1994.

1.4. Effective Date. -- May 19, 1994.

' 106-18-2. Definitions.

2.1. "Fair Value" means the amount, minus estimated expenses to sell, that the bank could reasonably expect to receive for the property in a current sale between a willing buyer and a willing seller, other than in a forced or liquidation sale.

2.2. "Cost" means the amount paid by the bank to purchase the property minus depreciation if the property is held for use by the bank and is not an asset held for sale; and means the amount actually paid by the bank to obtain the property at foreclosure plus the bank's unpaid loan balance, or in the event the property is surrendered by deed or otherwise obtained by the bank in satisfaction of debt previously contracted, the amount of the unpaid loan balance when the property is held for sale.

2.3. "Other Real Estate Owned" or "OREO" means real estate obtained by a financial institution as a result of a loan default or repayment of debt or otherwise and which is held for sale; and includes all such property so designated in accordance with Generally Accepted Accounting Principals (GAAP).

2.4. "Financial Institution" means those institutions defined as such in W. Va. Code ' 31A-1-2(1).

2.5. "Affiliate" means those persons or entities defined as such in W. Va. Code ' 31A-8-3(b).

' 106-18-3. Valuation of Real Estate Held by State-Chartered Banks

3.1. Real Estate Held For Use -- In determining the value that a state-chartered bank places on its books for a real estate asset which it holds for use to conduct its banking business, the bank shall calculate the amount as the lesser of fair value or cost, the cost being the price paid by the bank to purchase the property minus depreciation.

3.2. Real Estate Held For Sale -- In determining the value that a state-chartered bank places on its books for a real estate asset which it obtained by foreclosure or otherwise obtained and holds for sale, the bank shall calculate the amount as the lesser of fair value or cost, the cost being the price actually paid to obtain the property at foreclosure plus the bank's unpaid loan balance, or in the event the property is surrendered by deed or otherwise obtained by the bank in satisfaction of debt previously contracted, the amount of the unpaid loan balance.

3.3. Use of GAAP Principals -- In determining the value of other real estate owned by the bank and held for sale, as well as the value of real estate held by the bank for its own use, and in determining the proper accounting for the disposal of the real estate, state-chartered banks shall use "Generally Accepted Accounting Principals" (GAAP) as set forth by the American Institute of Certified Public Accountants (AICPA).

3.4. Conformity With Federal Law -- Notwithstanding any contrary provision of this rule, state-chartered banks shall follow federal banking law and regulations in determining their real estate's fair value and cost.

' 106-18-4. Holding Period.

4.1. Pursuant to W. Va. Code ' 31A-4-13(e) a state-chartered bank may hold other real estate owned for a period not to exceed ten years, except that the Commissioner may approve a written request by the bank to extend the holding period for up to an additional two years, if:

4.1.1. The bank has made a good faith attempt to dispose of the other real estate owned within the ten year period; or

4.1.2. Disposal of the other real estate owned within the ten year period would be detrimental to the bank.

4.2. The holding period begins on the date that ownership of the property is originally transferred to the state-chartered bank except that: The holding period for former banking premises begins on the date of relocation to new banking quarters. If there is no relocation or if the property was originally acquired for future expansion and will not be used as such, then the holding period begins on the date on which the bank decides that banking use is no longer contemplated.

4.3. Real estate acquired by a state-chartered bank for future bank expansion should normally be used within three (3) years. Prior to acquisition of such real estate, the bank shall state, by board of directors resolution or other official action, definite plans for its use. The resolution or other official action shall be available to inspection by state and federal bank examiners.

4.4. A state-chartered bank may comply with its obligation to dispose of other real estate obtained through foreclosure or surrender of deed or otherwise in satisfaction of debt previously contracted by retaining the property for its own use as bank premises or by transferring it to a subsidiary for use in the business of the subsidiary upon the approval of the institution's board of directors.

' 106-18-5. Appraisal Requirements.

5.1. Upon transfer to other real estate owned, a state chartered bank shall substantiate fair value by obtaining an appraisal for the property or by obtaining an appropriate evaluation if an appraisal is not otherwise required by federal or state laws or regulations.

5.2. The state-chartered bank shall develop a prudent collateral evaluation policy that allows the bank to monitor the fair value of each parcel of other real estate owned in a manner consistent with prudent banking practice.

5.3. Provided however, that if a state-chartered bank already has a recent valid appraisal or an appropriate evaluation on a troubled real estate loan or on a loan secured by property designated as in-substance foreclosure under GAAP, then the bank is not required to obtain another appraisal or evaluation upon acquiring ownership. The bank shall, though, continue to follow its prudent collateral evaluation policy.

' 106-18-6. Additional Expenditures and Notification.

6.1. Additional expenditures on OREO -- Banks shall expense normal repairs and maintenance costs when incurred as per Generally Accepted Accounting Principals (GAAP). For other real estate owned that is a development or improvement project, a state-chartered bank may only make further prudent advances to complete the project if they:

6.1.1. Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and

6.1.2. Are not made for the purpose of speculation in real estate.

6.2. Notification procedures -- The bank shall notify the Commissioner in writing at least 30 days before implementing a development or improvement plan for other real estate owned that would cause the sum of the bank's recorded investment amount, and any unpaid prior liens on the property to exceed 10% of the bank's capital and surplus. The required notification must include any documentation necessary to demonstrate that the additional expenditure is consistent with the conditions and limitations in this section. If the Commissioner imposes no additional conditions or limitations on the bank's plan within 30 days following receipt of the bank's notification, then on the thirty-first day (or sooner if notified by the Commissioner) the bank may implement the plan to develop or improve the other real estate owned.

' 106-18-7. Prohibited Conduct at Foreclosure and OREO Sales by Directors, Officers, Employees and Affiliates of a Financial Institution.

7.1. Participation As Purchaser -- No director, officer, employee or affiliate of a financial institution shall, either directly or indirectly, purchase property for sale as the result of the financial institution's foreclosure upon that property without the prior approval of the disinterested members of the board of directors of the institution. Provided, however, that such purchase may be made by the institution's directors, officers, employees or affiliates if it is made in the name of, and on behalf of, the institution foreclosing on the property.

7.2. Inside Information -- No director, officer, employee or affiliate of a financial institution shall, in connection with a public foreclosure sale to be conducted by their institution, provide any person with non-public inside information held by the institution for the purpose of assisting that person against others in making a foreclosure sale bid.

7.3. Beneficiary of Foreclosure Sale -- No director, officer, employee or affiliate of a financial institution shall conspire with another person to become the beneficial owner of property purchased by that other person at a foreclosure sale held by the institution. No prior agreement or arrangement shall be made

whereby the director, officer, employee or affiliate of a financial institution pledges to purchase the foreclosed property from the buyer at a later date with the purpose of avoiding obtaining prior approval of the institution's board of directors as required in subsection 7.1 of this rule.

7.4. Prohibited Use of Property -- No director, officer, employee or affiliate of a financial institution shall use for any personal purpose other real estate owned by that institution. Nor shall they use the other real estate owned for any business purpose, except as permitted by the procedure in section 4.4 of this rule, or for incidental and temporary use related to the institution's business pending final disposition of the property, where the institution is endeavoring to make bona fide efforts to sell such property. Provided, however, that nothing in this rule prohibits a financial institution from collecting rent or lease payments from any third-party originally owed to the debtor for use of the property pending final disposition of the property, where the institution is endeavoring to make bona fide efforts to sell the property.

7.5. Participation as a Broker -- No director, officer, employee or affiliate of a financial institution shall accept or agree to accept, directly or indirectly, any brokerage fee in connection with the sale by that institution of other real estate owned.

7.6. Violation and Penalty -- Any person violating this section of the rule will be considered in violation of W. Va. Code ' 31A-8-3 and will be subject to all the penalties provided therefore.

' 106-18-8. Severability.

If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.